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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 DEANA LOZANO, *individually and on*)
11 *behalf of all those similarly situated,*)
12)
13 v.) Plaintiff,) No. _____
14 WALMART, INC., *a Delaware*) CLASS ACTION COMPLAINT
15 *corporation,*)
16) JURY TRIAL DEMANDED
Defendant.)
)

18 Deana Lozano (“Plaintiff”), individually and on behalf of all other California consumers
19 similarly situated, by and through undersigned counsel, hereby brings this action against
20 Walmart Inc. (“Walmart”), alleging that its Great Value Fruit and Grain Cereal Bars (blueberry,
21 apple cinnamon, mixed berry, and strawberry flavors); and its Great Value Drink Enhancer
22 (strawberry watermelon, fruit punch, and raspberry black tea flavors) (together, “the Products”),
23 which are manufactured, packaged, labeled, advertised, distributed, and sold by Defendant, are
24 misbranded and falsely advertised, and upon information and belief and investigation of counsel
25 alleges as follows:

PARTIES

1. Plaintiff Deana Lozano is and at all times relevant was a citizen of the state of California, domiciled in Los Angeles, California.

2. Defendant Walmart, Inc. is a Delaware corporation with its principal place of business and headquarters in Bentonville, Arkansas.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act, Pub. L. 109-2, 119 Stat. 4 (codified in scattered sections of Title 28 of the United States Code); specifically, under 28 U.S.C. § 1332(d), which provides for the original jurisdiction of the federal district courts over “any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and [that] is a class action in which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

4. Plaintiff seeks to represent Class members who are citizens of states or countries different from the Defendant.

5. The matter in controversy in this case exceeds \$5,000,000 in the aggregate, exclusive of interests and costs.

6. In addition, “the number of members of all proposed plaintiff classes in the aggregate” is greater than 100. *See* 28 U.S.C. § 1332(d)(5)(B).

7. In the alternative, the Court has jurisdiction pursuant to 28 U.S.C. § 1332(a). The amount in controversy exceeds \$75,000, exclusive of interest and costs.

8. This Court has personal jurisdiction over Defendant because this action arises out of and relates to Defendant's contacts with this forum.

9. Those contacts include but are not limited to sales of the Products directly to commercial and individual consumers located in this district, including Plaintiff; shipping the

1 Products to commercial and individual consumers in this district, including Plaintiff; knowingly
2 directing advertising and marketing materials concerning the Products into this district through
3 wires and mails, both directly and through electronic and print publications that are directed to
4 commercial and individual consumers in this district; and operating an e-commerce web site
5 that offers the Products for sale to commercial and individual consumers in this district, as well
6 as offering the Products for sale through third-party e-commerce websites, through both of
7 which commercial and individual consumers residing in this district have purchased the
8 Products.

9
10 10. Defendant knowingly directs electronic activity and ships the Products into this
11 district with the intent to engage in business interactions for profit, and it has in fact engaged in
12 such interactions, including the sale of the Products to Plaintiff.
13

14 11. Plaintiff's losses and those of other Class members were sustained in this district.
15

16 12. Venue is proper pursuant to 28 U.S.C. § 1331(b)(2) because a substantial part of
the events or omissions giving rise to Plaintiff's claims occurred within this district.
17

18 13. Venue is also proper pursuant to 28 U.S.C. § 1331(c)(2) because this Court
maintains personal jurisdiction over Defendant.
19

FACTUAL ALLEGATIONS

A. Consumers Pay A Premium for "Clean Labels."

20 14. Across the globe, consumers are increasingly attuned to claims that foods are "all-
natural," minimally processed, or otherwise free of artificial flavors and preservatives.
21

22 15. For example, a 2018 survey by L.E.K. Consulting found that overwhelming
numbers of consumers were committed or casual adherents to so-called "clean label" food
23 attributes: "No artificial ingredients" (69 percent); "No preservatives" (67 percent); or "All-
natural" (66 percent). These were the three most attractive attributes in the consumer survey.
24

1 Roughly 60 to 70 percent of consumers reported a willingness to pay a price premium for “clean
2 label” foods. See <https://www.lek.com/insights/ei/next-generation-mindful-food-consumption>.

3 16. This consumer preference has led to an explosion in the category of “clean label”
4 foods and beverages. Leading analyst Allied Market Research estimated that the “natural foods
5 and drinks” category would grow by an estimated compound annual growth rate of 13.7 percent
6 from 2016 to 2023, reaching \$191 billion in annual sales by 2023. See
7 <https://www.alliedmarketresearch.com/natural-food-and-drinks-market>.

8 17. Ms. Lozano purchased the Products on or about February 11, 2023, from a Wal-
9 Mart on Inglewood Avenue in Hawthorne, California.

10 18. Ms. Lozano is a health care administrator and amateur athlete who eats with
11 intentionality and for health. She carefully reviews labels, including the Products’ labels, to
12 ensure that she consumes only natural ingredients and avoids artificial flavors and ingredients.
13

14 **B. Defendant’s Use of Synthetic Flavorings and Deceptive Labels.**

15 19. Defendant Walmart formulates, manufactures, and sells the Products under its in-
16 house brand, “Great Value.”

17 20. The front label (or “principal display panel”) of the Fruit and Grain Cereal Bars,
18 as well as the front label of each individual wrapped bar, state that they are “Naturally Flavored,”
19 emphasizing the statement with depictions of fruits:
20





21. Likewise, the front labels of the Great Value Drink Enhancer state that they
22. contain “Natural Flavor with Other Natural Flavors,” emphasizing the statement with depictions
23. of fruits:



24. These natural flavoring claims are false. The Products are flavored using an
25. artificial flavoring, DL malic acid, that is derived from petrochemicals.

- 1 23. The Products state, on the back label, that they contain “malic acid.”
- 2 24. While there is a naturally occurring form of malic acid, it is extremely expensive
- 3 to formulate in large quantities and is almost never used in mass-produced food products.
- 4 Instead, testing by an independent third-party laboratory has confirmed that the malic acid that
- 5 Defendant uses in these Products is DL malic acid, a synthetic substance derived from
- 6 petrochemicals.¹
- 7
- 8 25. This type of malic acid is manufactured in petrochemical plants from benzene or
- 9 butane—components of gasoline and lighter fluid, respectively—through a series of chemical
- 10 reactions, some of which involve highly toxic chemical precursors and byproducts.
- 11
- 12 26. Fruit flavors in a food are imparted by the interactions between sugars, acids,
- 13 lipids, and various volatile compounds. The sweetness or tartness of a fruit flavor is determined
- 14 by the ratio between the sugars (mainly glucose and fructose) and acids, such as citric and malic
- 15 acid.
- 16
- 17 27. The quality and consumer acceptability of fruit flavors is based on their perceived
- 18 sweetness and tartness, which in turn is driven by the ratio between sugars and acids. Fruits have
- 19 their own natural ratio of sugars and acids.
- 20
- 21 28. The DL malic acid used in the Products is used to create, simulate, and/or reinforce
- 22 the sweet and tart taste that consumers associate with the fruit flavors stated on the labels.
- 23
- 24 29. Defendant uses the petrochemical-derived DL malic acid in its Products to create
- 25 a sweet and tart flavor but pretends otherwise, conflating natural and artificial flavorings,
- 26 misbranding the Products and deceiving consumers.
- 27
- 28

¹ DL malic acid is also called d-hydroxybutanedioic acid or (R)-(+)-2-Hydroxysuccinic acid.

1 30. The ingredients on the Products' label are declared in a way that is misleading and
2 contrary to law, because Defendant designates the ingredient by its generic name, "malic acid,"
3 instead of by its specific name, "DL malic acid."

4 **C. Requirements for Labelling**

5 31. Federal regulations promulgated pursuant to the Food, Drug, and Cosmetic Act
6 ("FDCA") require that a food's label accurately describe the nature of the food product and its
7 characterizing flavors. 21 C.F.R. § 102.5(a).

8 32. Artificial flavor is defined as "any substance, the function of which is to impart
9 flavor, which is not derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible
10 yeast, herb, bark, bud, root, leaf or similar plant material, meat, fish, poultry, eggs, dairy
11 products, or fermentation products thereof." 21 C.F.R. § 101.22(a)(1).

12 33. Natural flavor is defined as "essential oil, oleoresin, essence or extractive, protein
13 hydrolysate, distillate, or any product of roasting, heating or enzymolysis, which contains the
14 flavoring constituents" from fruits or vegetables, "whose significant function in food is flavoring
15 rather than nutritional." 21 C.F.R. § 101.22(a)(3).

16 34. Any recognizable primary flavor identified directly or indirectly on the front label
17 of a food product, whether by word, vignette, depiction of a fruit, or other means is referred to
18 as a "characterizing flavor." 21 C.F.R. § 101.22.

19 35. Here, the Products' labels both state the characterizing flavors and reinforce the
20 claim that this characterizing flavor is achieved by using only natural flavors through use of
21 depictions of fruits.

22 36. If a food product's characterizing flavor is not created exclusively by the named
23 flavor ingredient, the product's front label must state that the product's flavor was simulated or
24 reinforced with either natural or artificial flavorings or both. If any artificial flavor is present

1 which “simulates, resembles or reinforces” the characterizing flavor, the front label must
2 prominently inform consumers that the product is “Artificially Flavored.” 21 C.F.R. §
3 101.22(i)(2).

4 37. A food product’s label also must include a statement of the “presence or absence
5 of any characterizing ingredient(s) or component(s) . . . when the presence or absence of such
6 ingredient(s) or component(s) in the food has a material bearing on price or consumer
7 acceptance . . . and consumers may otherwise be misled about the presence or absence of the
8 ingredient(s) or component(s) in the food.” 21 C.F.R. § 102.5.

9 38. Such statement must be in boldface print on the front display panel and of
10 sufficient size for an average consumer to notice.

11 39. California’s Sherman Food, Drug, and Cosmetic Law, Cal. Health & Saf. Code §
12 109875, *et seq.*, incorporates all food flavoring and additive regulations of the FDCA.

13 40. By changing the ratio between sugars and acids that is naturally found in fruits,
14 the DL malic acid used in the Products reinforces, simulates, or creates the characterizing
15 flavors, regardless of any other effect it may have or purpose for which it was included.

16 41. DL malic acid is not a “natural flavor” as this term is defined by federal and state
17 regulations and is not derived from a fruit or vegetable or any other natural source. The Products
18 therefore contain artificial flavorings.

19 42. Because the Products contain artificial flavoring, California law requires the
20 Products to display both front- and back-label disclosures to inform consumers that the Products
21 are artificially flavored.

22 43. The Products have none of the required disclosures regarding the use of artificial
23 flavors.

1 44. Plaintiff reserves the right to amend this Complaint to add further products that
2 contain similar label misrepresentations as testing continues.

3 49. Labels are the chief means by which food product manufacturers convey critical
4 information to consumers, and consumers have been conditioned to rely on the accuracy of the
5 claims made on these labels. As the California Supreme Court stated in a case involving alleged
6 violations of the UCL and FAL, “Simply stated: labels matter. The marketing industry is based
7 on the premise that labels matter, that consumers will choose one product over another similar
8 product based on its label.” *Kwikset Corp. v. Superior Court*, 51 Cal.4th 310, 328 (2011).

9
10 50. Plaintiff reviewed the labels on the Products prior to her purchase, and reviewed
11 the natural flavoring claims being made on those labels. Consumers such as Plaintiff who viewed
12 the Products’ labels reasonably understood Defendant’s “Naturally Flavored” and “Natural
13 Flavors with Other Natural Flavors” statements, as well as its failure to disclose the use of
14 artificially derived malic acid, to mean that the Products contain only natural flavorings. This
15 representation was also false.
16

17 51. Consumers including Plaintiff reasonably relied on Defendant’s statements such
18 that they would not have purchased the Products from Defendant if the truth about the Products
19 was known, or would have only been willing to pay a substantially reduced price for the Products
20 had they known that Defendant’s representations were false and misleading.
21

22 52. In the alternative, because of its deceptive and false labelling statements,
23 Defendant was enabled to charge a premium for the Products relative to key competitors’
24 products, or relative to the average price charged in the marketplace.
25

26 53. Consumers including Plaintiff especially rely on label claims made by food
27 product manufacturers such as Walmart, as they cannot confirm or disprove those claims simply
28 by viewing or even consuming the Products.
29

54. Plaintiff suffered economic injury by Defendant's fraudulent and deceptive conduct as stated herein, and there is a causal nexus between Defendant's deceptive conduct and Plaintiff's injury.

CLASS ACTION ALLEGATIONS

55. Plaintiff brings this action individually and as representative of all those similarly situated pursuant to Federal Rule of Civil Procedure 23 on behalf of all consumers in California who purchased the Products within four years prior to the filing of this Complaint.

56. Excluded from the Class are Defendant and its affiliates, parents, subsidiaries, employees, officers, agents, and directors. Also excluded are any judicial officers presiding over this matter and the members of their immediate families and judicial staff.

57. Plaintiff reserves the right to alter the Class definition, and to amend this Complaint to add Subclasses, as necessary to the full extent permitted by applicable law.

58. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of the claims on a class-wide basis using the same evidence as individual Class members would use to prove those elements in individual actions alleging the same claims.

59. **Numerosity – Rule 23(a)(1):** The size of the Class is so large that joinder of all Class members is impracticable. Plaintiff believes and avers there are thousands of Class members geographically dispersed throughout the United States.

60. Existence and Predominance of Common Questions of Law and Fact – Rule 23(a)(2), (b)(3): There are questions of law and fact common to the Class. These questions predominate over any questions that affect only individual Class members. Common legal and factual questions and issues include but are not limited to:

- 1 a. Whether the marketing, advertising, packaging, labeling, and other
- 2 promotional materials for Defendant's Products is misleading and deceptive;
- 3 b. Whether a reasonable consumer would understand Defendant's natural
- 4 flavorings claims to indicate that the Products contained only natural
- 5 flavorings, and reasonably relied upon those representations;
- 6 c. Whether Defendant was unjustly enriched at the expense of the Plaintiff and
- 7 Class members;
- 8 d. the proper amount of damages and disgorgement or restitution;
- 9 e. the proper scope of injunctive relief; and
- 10 f. the proper amount of attorneys' fees.

12 61. Defendant engaged in a common course of conduct in contravention of the laws
13 Plaintiff seeks to enforce individually and on behalf of the Class. Similar or identical violations
14 of law, business practices, and injuries are involved. Individual questions, if any, pale by
15 comparison, in both quality and quantity, to the numerous common questions that predominate
16 this action. The common questions will yield common answers that will substantially advance
17 the resolution of the case.

18 62. In short, these common questions of fact and law predominate over questions that
19 affect only individual Class members.

20 63. **Typicality – Rule 23(a)(3):** Plaintiff's claims are typical of the claims of the Class
21 members because they are based on the same underlying facts, events, and circumstances
22 relating to Defendant's conduct.

23 64. Specifically, all Class members, including Plaintiff, were harmed in the same way
24 due to Defendant's uniform misconduct described herein; all Class members suffered similar

1 economic injury due to Defendant's misrepresentations; and Plaintiff seeks the same relief as
2 the Class members.

3 65. There are no defenses available to Defendant that are unique to the named
4 Plaintiff.

5 66. These Products are formulated into different flavors, but each is derived from a
6 base formulation that is substantially similar across all the Products.

7 67. The Products all make the same natural flavorings claim, which is deceptive in the
8 same way across all of the Products because it relates to a single flavoring, DL malic acid.

9 68. The Products are also priced and packaged similarly.

10 69. Because of these similarities, the resolution of the asserted claims will be identical
11 as between purchased and unpurchased Products.

12 70. Because both the products and alleged misrepresentations are substantially
13 similar, Plaintiff's claims related to the Products that she purchased are typical of the claims
14 available to all purchasers of the Products. As such, Plaintiff is an adequate class representative
15 for a class of purchasers of all of the Products, regardless whether Plaintiff purchased every
16 flavor of the Products.

17 71. **Adequacy of Representation – Rule 23(a)(4):** Plaintiff is a fair and adequate
18 representative of the Class because Plaintiff's interests do not conflict with the Class members'
19 interests. Plaintiff will prosecute this action vigorously and is highly motivated to seek redress
20 against Defendant.

21 72. Furthermore, Plaintiff has selected competent counsel who are experienced in
22 class action and other complex litigation. Plaintiff and Plaintiff's counsel are committed to
23 prosecuting this action vigorously on behalf of the Class and have the resources to do so.

1 73. **Superiority – Rule 23(b)(3):** The class action mechanism is superior to other
2 available means for the fair and efficient adjudication of this controversy for at least the
3 following reasons:

- 4 a. the damages individual Class members suffered are small compared to the burden
5 and expense of individual prosecution of the complex and extensive litigation
6 needed to address Defendant's conduct such that it would be virtually impossible
7 for the Class members individually to redress the wrongs done to them. In fact,
8 they would have little incentive to do so given the amount of damage each member
9 has suffered when weighed against the costs and burdens of litigation;
- 10 b. the class procedure presents fewer management difficulties than individual
11 litigation and provides the benefits of single adjudication, economies of scale, and
12 supervision by a single Court;
- 13 c. the prosecution of separate actions by individual Class members would create a
14 risk of inconsistent or varying adjudications, which would establish incompatible
15 standards of conduct for Defendant; and
- 16 d. the prosecution of separate actions by individual Class members would create a
17 risk of adjudications with respect to them that would be dispositive of the interests
18 of other Class members or would substantively impair or impede their ability to
19 protect their interests.

20 74. Unless the Class is certified, Defendant will retain monies received as a result of
21 its unlawful and deceptive conduct alleged herein.

22 75. Unless a class-wide injunction is issued, Defendant will likely continue to
23 advertise, market, promote, and sell its Products in an unlawful and misleading manner, as
24 described throughout this Complaint, and members of the Class will continue to be misled,

harmed, and denied their rights under the law. Plaintiff will be unable to rely on the Products' advertising or labeling in the future, and so will not purchase the Products although she would like to.

76. **Ascertainability.** To the extent ascertainability is required, the Class members are readily ascertainable from Defendant's records and/or its agents' records of retail and online sales, as well as through public notice.

77. Defendant has acted on grounds applicable to the Class as a whole, thereby making appropriate final injunctive and declaratory relief concerning the Class as a whole.

COUNT 1
VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE
SECTION 17200 *et seq.* — “UNFAIR” CONDUCT

78. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

79. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as a result of Defendant's actions as set forth herein.

80. Defendant's actions as alleged in this Complaint constitute "unfair" conduct within the meaning of California Business and Professions Code Section 17200, *et seq.*

81. Defendant's business practices, as alleged herein, are "unfair" because it fails to disclose accurately the synthetic flavoring used in the Products.

82. As a result of this “unfair” conduct, Plaintiff expended money and engaged in activities it would not otherwise have spent or conducted.

83. Defendant's wrongful business practices alleged herein constituted, and continue to constitute, a continuing course of unfair competition since it continues to market and sell its products in a manner that offends public policy and/or in a fashion that is immoral, unethical, oppressive, unscrupulous and/or substantially injurious to its customers.

84. Defendant publicly disseminated untrue or misleading representations regarding the flavoring label claims of its Products, which it knew, or in the exercise of reasonable care should have known, were untrue or misleading.

85. Pursuant to Business and Professions Code Section 17203, Plaintiff seeks an order of this court enjoining Defendant from continuing to engage in “unfair” business practices and any other act prohibited by law, including those acts set forth in this Complaint, and further seek all other relief allowable under Business and Professions Code Section 17200, *et seq.*

COUNT 2
VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE
SECTION 17200 *et seq.* — “FRAUDULENT” CONDUCT

86. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

87. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as a result of Defendant's actions as set forth above.

88. Defendant's actions as alleged in this Complaint constitute "fraudulent" conduct within the meaning of California Business and Professions Code Section 17200 *et seq.*

89. Defendant's business practices, as alleged herein, are "fraudulent" because it fails to disclose accurately the synthetic flavoring used in the Products.

90. As a result of this “fraudulent” conduct, Plaintiff expended money and engaged in activities it would not otherwise have spent or conducted.

91. Defendant's wrongful business practices alleged herein constituted, and continue to constitute, a continuing course of unfair competition since it continues to market and sell its products in a manner that offends public policy and/or in a fashion that is immoral, unethical, oppressive, unscrupulous and/or substantially injurious to its customers.

92. Defendant publicly disseminated untrue or misleading representations regarding the flavoring label claims of its Products, which it knew, or in the exercise of reasonable care should have known, were untrue or misleading.

93. Pursuant to Business and Professions Code Section 17203, Plaintiff seeks an order of this Court enjoining Defendant from continuing to engage in “fraudulent” business practices and any other act prohibited by law, including those acts set forth in this Complaint, and further seeks all other relief allowable under Business and Professions Code Section 17200, *et seq.*

COUNT 3
VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE
SECTION 17200 *et seq.* — “UNLAWFUL” CONDUCT

94. Plaintiff reallege the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

95. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as a result of Defendant's actions as set forth above.

96. Defendant's actions as alleged in this Complaint constitute "unlawful" conduct within the meaning of California Business and Professions Code Section 17200, *et seq.*

97. Defendant's business practices, as alleged herein, are "unlawful" because it fails to disclose accurately the synthetic flavoring used in the Products.

98. As a result of this “unlawful” conduct, Plaintiff expended money and engaged in activities she would not otherwise have spent or conducted.

99. Defendant's business practices alleged herein constituted, and continue to constitute, a continuing course of unfair competition since it continues to market and sell its products in a manner that offends public policy and/or in a fashion that is immoral, unethical, oppressive, unscrupulous and/or substantially injurious to its customers.

100. Defendant publicly disseminated untrue or misleading representations regarding the flavoring label claims of its Products, which it knew, or in the exercise of reasonable care should have known, were untrue or misleading.

101. Pursuant to Business and Professions Code Section 17203, Plaintiff seeks an order of this court enjoining Defendant from continuing to engage in “unlawful” business practices and any other act prohibited by law, including those acts set forth in this Complaint, and further seeks all other relief allowable under Business and Professions Code Section 17200, *et seq.*

COUNT 4
VIOLATION OF CALIFORNIA BUSINESS &
PROFESSIONS CODE SECTION 17500 *et seq.*

102. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

103. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as a result of Defendant's actions as set forth above.

104. Defendant engaged in advertising and marketing to the public and offered for sale advertising services on a nationwide basis, including in California.

105. Defendant engaged in the advertising and marketing alleged herein with the intent to directly or indirectly induce the sale of the Products to consumers.

106. Defendant's advertisements and marketing representations regarding the characteristics of the Products were false, misleading, and deceptive as set forth above.

107. At the time it made and disseminated the statements alleged herein, Defendant knew or should have known that the statements were untrue or misleading, and acted in violation of Business and Professions Code Section 17500, *et seq.*

108. Plaintiff seeks injunctive relief and all other relief allowable under Business and Professions Code Section 17500, *et seq.*

COUNT 5

109. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

110. Plaintiff is a “consumer” within the meaning of the Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1761(d).

111. The sale of Defendant's Products to Plaintiff and Class members was a "transaction" within the meaning of the CLRA, Cal. Civ. Code § 1761(e).

112. The Products purchased by Plaintiff and Class members are “goods” within the meaning of the CLRA, Cal. Civ. Code § 1761(a).

113. As alleged herein, Defendant's business practices are a violation of the CLRA because Defendant deceptively failed to reveal facts that are material in light of the flavoring representations that were made by Defendant on the labels of its Products.

114. Defendant's ongoing failure to provide material facts about its Products on its labels violates the following subsections of Cal. Civ. Code § 1770(a) in these respects:

- a. Defendant's acts and practices constitute misrepresentations that its Products have characteristics, benefits, or uses which they do not have;
 - b. Defendant misrepresented that its Products are of a particular standard, quality, and/or grade, when they are of another;
 - c. Defendant's acts and practices constitute the advertisement of goods, without the intent to sell them as advertised;
 - d. Defendant's acts and practices fail to represent that transactions involving its Products involve actions that are prohibited by law, particularly the use of misleading nutritional labelling; and

e. Defendant's acts and practices constitute representations that its Products have been supplied in accordance with previous representations when they were not.

115. By reason of the foregoing, Plaintiff and the Class have been irreparably harmed, entitling them to injunctive relief, disgorgement, and restitution.

116. Pursuant to Cal. Civ. Code § 1782, Plaintiff notified Defendant in writing of the particular violations of the CLRA described herein and demanded Defendant rectify the actions described above by providing complete monetary relief, agreeing to be bound by their legal obligations and to give notice to all affected customers of their intent to do so. Plaintiff sent this notice by certified mail to Defendant, at least 30 days before the filing of this Complaint.

117. Pursuant to Cal. Civ. Code §§ 1770 and 1780, Plaintiff and the Class are entitled
to recover actual damages sustained as a result of Defendant's violations of the CLRA. Such
damages include, without limitation, monetary losses and actual, punitive, and consequential
damages, in an amount to be proven at trial.

118. Pursuant to Cal. Civ. Code §§ 1770 and 1780, Plaintiff is entitled to enjoin publication of misleading and deceptive nutritional labels on Defendant's Products and to recover reasonable attorneys' fees and costs.

COUNT 6

UNJUST ENRICHMENT

119. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

120. Defendant, through its marketing and labeling of the Products, misrepresented and deceived consumers regarding the flavoring in the Products.

121. Defendant did so for the purpose of enriching itself and it in fact enriched itself by doing so.

122. Consumers conferred a benefit on Defendant by purchasing the Products, including an effective premium above their true value. Defendant appreciated, accepted, and retained the benefit to the detriment of consumers.

123. Defendant continues to possess monies paid by consumers to which Defendant is not entitled.

124. Under the circumstances it would be inequitable for Defendant to retain the benefit conferred upon it and Defendant's retention of the benefit violates fundamental principles of justice, equity, and good conscience.

125. Plaintiff seeks disgorgement of Defendant's ill-gotten gains and restitution of Defendant's wrongful profits, revenue, and benefits, to the extent, and in the amount, deemed appropriate by the Court, and such other relief as the Court deems just and proper to remedy Defendant's unjust enrichment.

126. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as
a result of Defendant's actions as set forth above.

COUNT 7
BREACH OF EXPRESS WARRANTY

127. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

128. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller, expressly warranted that the Products contain only “Natural Flavors with Other Natural Flavors” or are “Naturally Flavored.”

129. Defendant's express warranties, and its affirmations of fact and promises made to Plaintiff and the Class and regarding the Products, became part of the basis of the bargain between Defendant and Plaintiff and the Class, which creates an express warranty that the

Products would conform to those affirmations of fact, representations, promises, and descriptions.

130. The Products do not conform to the express warranty that the Products contain only "Natural Flavors" or are "Naturally Flavored," because they are flavored by and contain ingredients that are unnatural and synthetic, *i.e.*, DL malic acid.

131. As a direct and proximate cause of Defendant's breach of express warranty, Plaintiff and Class members have been injured and harmed because: (a) they would not have purchased the Products on the same terms if they knew the truth about the Products' unnatural ingredients; (b) they paid a price premium based on Defendant's express warranties; and (c) the Products do not have the characteristics, uses, or benefits that were promised.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request the Court grant the following relief against Defendant:

- a. Certifying the Class;
 - b. Declaring that Defendant violated the CLRA, UCL, and FAL;
 - c. Awarding actual and other damages as permitted by law, and/or ordering an accounting by Defendant for any and all profits derived by Defendant from the unlawful, unfair, and/or fraudulent conduct and/or business practices alleged herein;
 - d. Ordering an awarding of injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices as set forth herein, and ordering Defendant to engage in a corrective advertising campaign;
 - e. Ordering Defendant to pay attorneys' fees and litigation costs to Plaintiff;
 - f. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded; and

1 g. Such other relief as the Court may deem just and proper.

2 TRIAL BY JURY IS DEMANDED ON ANY COUNTS SO TRIABLE.

3 Respectfully submitted,

4 /s/ Charles C. Weller
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12 June 8, 2023

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